

## Introduced by Senator Speier

February 15, 2005

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An act to amend Sections 799 and 803 of the Penal Code, relating to crimes.

## LEGISLATIVE COUNSEL'S DIGEST

SB 261, as introduced, Speier. Sex offenders: statute of limitations.

Existing law provides that the prosecution of an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.

This bill would add specified sex offenses, including rape, sodomy, lewd or lascivious acts, oral copulation, continuous sexual abuse of a child, forcible acts of sexual penetration, and flight of a sex offender to avoid prosecution, to the list of crimes for which there is no statute of limitation for prosecution. The bill would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 799 of the Penal Code is amended to  
2 read:

3 799. (a) ~~Prosecution for an offense punishable by death or by~~  
4 ~~imprisonment in the state prison for life or for life without the~~  
5 ~~possibility of parole, or for the embezzlement of public~~  
6 ~~money, any of the following offenses~~ may be commenced at any  
7 time::

8 (1) *Offenses punishable by death.*

1     (2) *Offenses punishable by imprisonment in the state prison for*  
2     *life.*

3     (3) *Offenses punishable by imprisonment in the state prison for*  
4     *life without possibility of parole.*

5     (4) *Offenses relating to the embezzlement of public money.*

6     (5) *Offenses described in Section 261, 286, 288, 288a, 288.5,*  
7     *289, or 289.5.*

8     (b) This section shall apply in any case in which the defendant  
9     was a minor at the time of the commission of the offense and the  
10    prosecuting attorney could have petitioned the court for a fitness  
11    hearing pursuant to Section 707 of the Welfare and Institutions  
12    Code.

13    SEC. 2. Section 803 of the Penal Code, as amended by  
14    Section 7 of Chapter 2 of the Statutes of 2003-04 Fourth  
15    Extraordinary Session, is amended to read:

16    803. (a) Except as provided in this section, a limitation of  
17    time prescribed in this chapter is not tolled or extended for any  
18    reason.

19    (b) No time during which prosecution of the same person for  
20    the same conduct is pending in a court of this state is a part of a  
21    limitation of time prescribed in this chapter.

22    (c) A limitation of time prescribed in this chapter does not  
23    commence to run until the discovery of an offense described in  
24    this subdivision. This subdivision applies to an offense  
25    punishable by imprisonment in the state prison, a material  
26    element of which is fraud or breach of a fiduciary obligation, the  
27    commission of the crimes of theft or embezzlement upon an elder  
28    or dependent adult, or the basis of which is misconduct in office  
29    by a public officer, employee, or appointee, including, but not  
30    limited to, the following offenses:

31    (1) Grand theft of any type, forgery, falsification of public  
32    records, or acceptance of a bribe by a public official or a public  
33    employee.

34    (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

35    (3) A violation of Section 25540, of any type, or Section  
36    25541 of the Corporations Code.

37    (4) A violation of Section 1090 or 27443 of the Government  
38    Code.

39    (5) Felony welfare fraud or Medi-Cal fraud in violation of  
40    Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

~~(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

~~(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:~~

1     ~~(A) The limitation period specified in Section 800 or 801 has~~  
2     ~~expired.~~

3     ~~(B) The defendant has committed at least one violation of~~  
4     ~~Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the~~  
5     ~~same victim within the limitation period specified for that crime~~  
6     ~~in either Section 800 or 801.~~

7     ~~(3) (A) This subdivision applies to a cause of action arising~~  
8     ~~before, on, or after January 1, 1990, the effective date of this~~  
9     ~~subdivision, and it shall revive any cause of action barred by~~  
10    ~~Section 800 or 801 if any of the following occurred or occurs:~~

11    ~~(i) The complaint or indictment was filed on or before January~~  
12    ~~1, 1997, and it was filed within the time period specified in this~~  
13    ~~subdivision.~~

14    ~~(ii) The complaint or indictment is or was filed subsequent to~~  
15    ~~January 1, 1997, and it is or was filed within the time period~~  
16    ~~specified within this subdivision.~~

17    ~~(iii) The victim made the report required by this subdivision to~~  
18    ~~a responsible adult or agency after January 1, 1990, and a~~  
19    ~~complaint or indictment was not filed within the time period~~  
20    ~~specified in this subdivision, but a complaint or indictment is~~  
21    ~~filed no later than 180 days after the date on which either a~~  
22    ~~published opinion of the California Supreme Court, deciding~~  
23    ~~whether retroactive application of this section is constitutional,~~  
24    ~~becomes final or the United States Supreme Court files an~~  
25    ~~opinion deciding the question of whether retroactive application~~  
26    ~~of this subdivision is constitutional, whichever occurs first.~~

27    ~~(iv) The victim made the report required by this subdivision to~~  
28    ~~a responsible adult or agency after January 1, 1990, and a~~  
29    ~~complaint or indictment was filed within the time period~~  
30    ~~specified in this subdivision, but the indictment, complaint, or~~  
31    ~~subsequently filed information was dismissed, but a new~~  
32    ~~complaint or indictment is or was filed no later than 180 days~~  
33    ~~after the date on which either a published opinion of the~~  
34    ~~California Supreme Court, deciding whether retroactive~~  
35    ~~application of this section is constitutional, becomes final or the~~  
36    ~~United States Supreme Court files an opinion deciding the~~  
37    ~~question of whether retroactive application of this subdivision is~~  
38    ~~constitutional, whichever occurs first.~~

39    ~~(B) (i) If the victim made the report required by this~~  
40    ~~subdivision to a responsible adult or agency after January 1,~~

1 ~~1990, and a complaint or indictment was filed within the time~~  
2 ~~period specified in this subdivision, but the indictment,~~  
3 ~~complaint, or subsequently filed information was dismissed, a~~  
4 ~~new complaint or indictment may be filed notwithstanding any~~  
5 ~~other provision of law, including, but not limited to, subdivision~~  
6 ~~(c) of Section 871.5 and subdivision (b) of Section 1238.~~

7 ~~(ii) An order dismissing an action filed under this subdivision,~~  
8 ~~which is entered or becomes effective at any time prior to 180~~  
9 ~~days after the date on which either a published opinion of the~~  
10 ~~California Supreme Court, deciding the question of whether~~  
11 ~~retroactive application of this section is constitutional, becomes~~  
12 ~~final or the United States Supreme Court files an opinion~~  
13 ~~deciding the question of whether retroactive application of this~~  
14 ~~subdivision is constitutional, whichever occurs first, may not be~~  
15 ~~considered an order terminating an action within the meaning of~~  
16 ~~Section 1387.~~

17 ~~(iii) Any ruling regarding the retroactivity of this subdivision~~  
18 ~~or its constitutionality made in the course of the previous~~  
19 ~~proceeding, including any review proceeding, may not be~~  
20 ~~binding upon refiling.~~

21 ~~(g) (1) Notwithstanding any other limitation of time described~~  
22 ~~in this chapter, a criminal complaint may be filed within one year~~  
23 ~~of the date of a report to a California law enforcement agency by~~  
24 ~~a person of any age alleging that he or she, while under the age of~~  
25 ~~18 years, was the victim of a crime described in Section 261,~~  
26 ~~286, 288, 288a, 288.5, 289, or 289.5.~~

27 ~~(2) This subdivision applies only if both of the following~~  
28 ~~occur:~~

29 ~~(A) The limitation period specified in Section 800 or 801 has~~  
30 ~~expired.~~

31 ~~(B) The crime involved substantial sexual conduct, as~~  
32 ~~described in subdivision (b) of Section 1203.066, excluding~~  
33 ~~masturbation that is not mutual, and there is independent~~  
34 ~~evidence that clearly and convincingly corroborates the victim's~~  
35 ~~allegation. No evidence may be used to corroborate the victim's~~  
36 ~~allegation that otherwise would be inadmissible during trial.~~  
37 ~~Independent evidence does not include the opinions of mental~~  
38 ~~health professionals.~~

39 ~~(3) (A) This subdivision applies to a cause of action arising~~  
40 ~~before, on, or after January 1, 1994, the effective date of this~~

1 ~~subdivision, and it shall revive any cause of action barred by~~  
2 ~~Section 800 or 801 if any of the following occurred or occurs:~~

3 ~~(i) The complaint or indictment was filed on or before January~~  
4 ~~1, 1997, and it was filed within the time period specified in this~~  
5 ~~subdivision.~~

6 ~~(ii) The complaint or indictment is or was filed subsequent to~~  
7 ~~January 1, 1997, and it is or was filed within the time period~~  
8 ~~specified within this subdivision.~~

9 ~~(iii) The victim made the report required by this subdivision to~~  
10 ~~a law enforcement agency after January 1, 1994, and a complaint~~  
11 ~~or indictment was not filed within the time period specified in~~  
12 ~~this subdivision, but a complaint or indictment is filed no later~~  
13 ~~than 180 days after the date on which either a published opinion~~  
14 ~~of the California Supreme Court, deciding the question of~~  
15 ~~whether retroactive application of this subdivision is~~  
16 ~~constitutional, becomes final or the United States Supreme Court~~  
17 ~~files an opinion deciding the question of whether retroactive~~  
18 ~~application of this subdivision is constitutional, whichever occurs~~  
19 ~~first.~~

20 ~~(iv) The victim made the report required by this subdivision to~~  
21 ~~a law enforcement agency after January 1, 1994, and a complaint~~  
22 ~~or indictment was filed within the time period specified in this~~  
23 ~~subdivision, but the indictment, complaint, or subsequently filed~~  
24 ~~information was dismissed, but a new complaint or indictment is~~  
25 ~~filed no later than 180 days after the date on which either a~~  
26 ~~published opinion of the California Supreme Court, deciding the~~  
27 ~~question of whether retroactive application of this subdivision is~~  
28 ~~constitutional, becomes final or the United States Supreme Court~~  
29 ~~files an opinion deciding the question of whether retroactive~~  
30 ~~application of this subdivision is constitutional, whichever occurs~~  
31 ~~first.~~

32 ~~(B) (i) If the victim made the report required by this~~  
33 ~~subdivision to a law enforcement agency after January 1, 1994,~~  
34 ~~and a complaint or indictment was filed within the time period~~  
35 ~~specified in this subdivision, but the indictment, complaint, or~~  
36 ~~subsequently filed information was dismissed, a new complaint~~  
37 ~~or indictment may be filed notwithstanding any other provision~~  
38 ~~of law, including, but not limited to, subdivision (c) of Section~~  
39 ~~871.5 and subdivision (b) of Section 1238.~~

~~(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, may not be considered an order terminating an action within the meaning of Section 1387.~~

~~(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, may not be binding upon refiling.~~

~~(h) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person under 21 years of age, alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

~~(2) This subdivision applies only if both of the following occur:~~

~~(A) The limitation period specified in Section 800 or 801 has expired.~~

~~(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.~~

~~(3) This subdivision applies to a cause of action arising before, on, or after January 1, 2002, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if the complaint or indictment was filed within the time period specified by this subdivision.~~

~~(i)~~

~~(f) (1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph~~

(2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, provided, however, that the one-year period from the establishment of the identity of the suspect shall only apply when either of the following conditions is met:

(A) For an offense committed prior to January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004.

(B) For an offense committed on or after January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) In the event the conditions set forth in subparagraph (A) or (B) of paragraph (1) are not met, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.

(3) For purposes of this section, “DNA” means deoxyribonucleic acid.

(j)

(g) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.



1     ~~(k) (1) In a criminal investigation involving child sexual~~  
2     ~~abuse as described in subdivision (g) or (h), when the limitations~~  
3     ~~period set forth therein has not expired, that period shall be tolled~~  
4     ~~from the time a party initiates litigation challenging a grand jury~~  
5     ~~subpoena until the end of that litigation, including any associated~~  
6     ~~writ or appellate proceeding, or until the final disclosure of~~  
7     ~~evidence to the investigating or prosecuting agency, if that~~  
8     ~~disclosure is ordered pursuant to the subpoena after the litigation.~~

9     ~~(2) Nothing in this subdivision affects the definition or~~  
10    ~~applicability of any evidentiary privilege.~~

11    ~~(3) This subdivision may not apply where a court finds that the~~  
12    ~~grand jury subpoena was issued or caused to be issued in bad~~  
13    ~~faith.~~

14    ~~(l) As used in subdivisions (f), (g), and (h), Section 289.5~~  
15    ~~refers to the statute enacted by Chapter 293 of the Statutes of~~  
16    ~~1991 relating to penetration by an unknown object.~~